

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Amendment of Parts 2 and 15 of the
Commission's Rules to Deregulate the
Equipment Authorization Requirements
for Digital Devices

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REPLY COMMENTS OF SPIRIT TECHNOLOGIES, INC.

Spirit Technologies, Inc. ("Spirit") hereby files its Reply Comments to the Comments filed in response to the Commission's Notice of Proposed Rule Making ("NPRM") in the above-captioned matter.¹ Spirit is a manufacturer of external storage peripherals for the consumer and business personal computer markets such as CD-ROM drive mechanisms.

Summary

In its NPRM, the Commission proposes to amend Parts 2 and 15 of its regulations by relaxing the equipment authorization requirements for personal computers and personal computer peripherals from "certification to a new equipment authorization process based on a manufacturer's or supplier's declaration of compliance."² The Commission sought comment on the process and several other related issues including revised qualification standards for

¹ Adopted and released on February 7, 1995.

² Id. at 1.

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professional testing labs and the modular assembly of digital devices with authorized components.

The Comments demonstrate that manufacturers, integrators, and suppliers (collectively, "Producers") are frustrated by high regulatory costs and long bureaucratic delays that are burdensome byproducts of the present equipment authorization processes. These parties vigorously support the Commission's efforts to make its equipment authorization regulations less burdensome and less costly thereby allowing products to reach the marketplace in less time and at a lower cost.³

The majority of Comments submitted by Producers establish that: (i) there is overwhelming support for the Commission to establish a new equipment authorization process based on a manufacturer's or supplier's Declaration of Conformity ("DOC"); (ii) filing a DOC certifying compliance abrogates the need for professional laboratory testing unless the Commission requests the submission of test measurements in particular instances of suspected noncompliance; and (iii) the modular assembly of units with approved components is the most practical and least intermeddling method of reducing redundant testing and lowering regulatory costs. On the other hand, there were some Comments which opposed the Commission's efforts to reduce redundant testing requirements, i.e., the Comments filed by equipment testing labs.

I. The Proposed DOC Procedure Is Strongly Endorsed

The Commission's proposed DOC procedure will shorten the time it takes to bring a product to the marketplace by eliminating the Commission's delay in processing the authorization application. Spirit and nearly all other Producers strongly support the adoption of a

³In doing so, it will act as an incentive to small manufacturers such as Spirit by allowing them to enter the marketplace.

DOC procedure.⁴ Well-intended manufacturers and suppliers will always test their products to assure that they are within the Commission's technical standards because the Commission has the authority to take appropriate enforcement action such as issuing a cease and desist order upon the discovery of any noncompliance.⁵

Compaq Computer Corporation ("Compaq") is one of the few Producers that do not wholly endorse the proposed DOC procedure. Instead, Compaq suggests that "[v]erification, as currently applied to manufacturers of Class A devices and Class B digital devices other than personal computers and peripherals, should be adopted as an alternative to the Declaration of Conformity as proposed." Compaq's Comments at 2.⁶ Compaq reasons that the verification procedure and the DOC procedure are identical except that the DOC procedure proposes "to include a test report number in the DOC and to identify in the manual the responsible party by name, address, and telephone number." *Id.* at 3.

Spirit agrees with Compaq that the "requirement for identification of a compliance test report by date and report number in the manual is both burdensome and of no use to the consumers of the final product." *Id.* By including such a requirement, the Commission increases the time it takes to bring a product to the marketplace, creates a logistical nightmare for mass production schedules, and greatly reduces the inherent value of adopting a DOC procedure.

⁴For instance, the Hewlett-Packard Company ("HP") urged that "the Commission should substitute the DOC program not only for equipment now subject to certification, but also for equipment subject to verification," HP, Comments at 1; International Business Machine Corporation ("IBM") stated that it "strongly endorses the Commission's determination to improve and expedite the current authorization procedure for personal computers and associated peripherals." IBM, Comments at 1. Apple Computer, Inc. ("Apple") stated that "Apple supports the Commission's proposal to relax the certification process for personal computers and their peripherals by implementing a manufacturer's DOC." Apple, Comments at 2.

⁵In most instances, the issuance of a cease and desist order is a devastating blow to the economic well-being of any corporation and provides a strong incentive for avoiding such a sanction by assuring that a product complies with the Commission's regulations.

⁶*Cf.* HP, Comments *supra* n. 4.

Therefore, Spirit agrees with Compaq that the proposed requirement of placing individualized data in each manual should be removed.

II. Professional Lab Testing Does Not Improve Compliance

It is illusory for the Commission to believe that professional lab testing of a product furthers the Commission's compliance objectives, i.e., violators of the Commission's regulations will market their products without prior testing and without applying for authorization.⁷ Rather than creating a more burdensome and costly authorization procedure, the damage to a Producer's reputation and the consequences of apprehension act as effective deterrents and encourage compliance. As urged by the several Producers, the Commission should shift its scarce resources from reviewing applications to enforcing compliance.⁸ In sum, deterrence is a much more effective and a less costly policing method.

Moreover, requiring a DOC and professional lab testing is redundant. An applicant's DOC should be accepted at face value unless there is probable cause to treat it differently. Ultimate responsibility for compliance should remain with the applicant. Thus, it makes very little sense to force the applicant to use a professional lab if the applicant will certify that the digital device is compliant with the Commission's regulations through self-testing or testing by using a non-professional lab. By requiring an applicant to obtain testing results from a professional lab, the Commission simply raises the applicant's regulatory costs without obtaining additional compliance benefits. Therefore, the Commission should adopt a "pure" self-

⁷Not surprisingly, the Comments filed on behalf of the testing labs generally oppose any proposed changes to the Commission's regulations that would lessen their involvement in the equipment authorization process.

⁸For instance, AT&T Corp. ("AT&T") stated that "[t]he manufacturer's expertise and interest in its reputation and credibility, together with the enforcement mechanisms in the Commission's rules, which would also apply to the DOC process, have been sufficient to ensure that the test results recite the actual emissions." AT&T, Comments at 6.

certification process that does not require an applicant to obtain testing results from a professional lab.

III. Producers Endorse the Commission's Proposal to Eliminate Testing Requirements for Digital Devices Assembled from Combinations of Authorized Components

The Comments support the Commission's premise that modularity and component substitution is vital to keeping the computer peripheral industry healthy.⁹ As proposed, manufacturers would seek approval of their components but any combination of approved components would not require further Commission approval irrespective of the configuration.

Spirit believes that the proposal is simply a reflection of the real world and that similar to other aspects of the NPRM, the proposal avoids unnecessary and costly regulation and delay. Consumers are free to pick and choose system components in order to realize the best product to meet their needs at the best price. For instance, a consumer may assemble a multimedia computer system by using a monitor, keyboard, CPU, CD-ROM drive, modem, and speakers that are produced by completely different manufacturers. System and component manufacturers are also picking and choosing system components due to changes to supply as well as changes to demand. The Commission, of course, does not require the consumer to certify its configuration. By the same token, it should not require certification of configurations by manufacturers using previously authorized component parts. Such regulation not only results in costly delays in getting products to market but to cover most situations, such regulation must be so broadly worded that it not only becomes intrusive and burdensome but, in many instances, anomalous.¹⁰

⁹Again not surprisingly, the labs are, as a general matter, opposed. However, their Comments are somewhat glib.


¹⁰In the event that unacceptable interference does occur, the Commission has in place the necessary tools by which to stop it. See supra n. 8.

IV. Conclusion

Spirit believes that the Commission's efforts to deregulate and demystify its equipment authorization regulations: will lower unproductive regulatory costs that are unnecessary financial burdens on Producers; will stimulate the production of products; will result in a greater diversity of product offerings; will attract entrepreneurs and investment capital; and will create new domestic employment opportunities.

For the reasons stated above, Spirit strongly endorses the Commission's efforts to deregulate its equipment authorization regulations and especially supports the Commission's proposals: (i) to adopt a DOC authorization procedure; and (ii) to eliminate testing requirements for combinations of authorized components.

Respectfully submitted this 5th day of July, 1995.

A handwritten signature in dark ink, appearing to read "Randall B. Lowe", is written over a horizontal line.

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